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To: politicalcommitteestatus@fec.gov
cc: lgross@mscenterforjustice.org

Subject: Notice 2004-6, The Federal Election Commission's Notice of Proposed Rulemaking of Regulations on Certain Activities that Affect Federal Elections.

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Access to

Democracy

Coalition

*Educator, community, civil rights, legal, and public policy
groups dedicated to ensuring equal access to democracy and civic
participation for all Mississippians.*

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April 9, 2004

VIA ELECTRONIC MAIL

Ms. Mai T. Dinh

Acting Assistant General Counsel

Federal Election Commission

999 E Street, N.W.

Washington, DC 20463

politicalcommitteestatus@fec.gov

RE: Notice 2004-6, The Federal Election Commission's Notice of Proposed Rulemaking of Regulations on Certain Activities that Affect Federal Elections.

Dear Assistant General Counsel Dinh:

This letter sets forth the views of the Mississippi Access to Democracy Coalition regarding the Federal Election Commission's (FEC) proposed regulation, which revises the Department's regulations on certain activities that affect federal elections, Political Committee Status, 69 Fed. Reg. 11736 (2004) (to be codified at 11 CFR Parts 100,102,104,106, and 114 26)(proposed Mar. 11, 2004) (hereafter "NPRM").

The Mississippi Access to Democracy Coalition (Coalition) is made of nonprofit community organizing, civil rights, legal, and public policy groups that are dedicated to ensuring equal access to democracy and civic participation for all Mississippians. The Coalition's member groups advance social and economic justice in Mississippi through the development of local resources and organizations dedicated to advancing similar agendas. As an initial matter, the Coalition concurs strongly with the comments submitted by the Coalition to Protect Nonprofit Advocacy. In lieu of reiterating the arguments contained therein, the Coalition respectfully offers the following additional comments for the Commission's consideration:

Facilitation of free speech for the politically disenfranchised is an indispensable element of any society that values the protection of its citizenry from tyrannical rule. It follows, that the Coalition is concerned with the proposed level of scrutiny to be visited upon the day-to-day communication activities of organizations affected by the NPRM. The proposed subjective examination of internal and external organizational communications by the Commission, in an effort to determine their "major purpose" will, by definition, impose a level of scrutiny that will introduce a log jam of censorship into the marketplace of ideas. For social justice organizations seeking to encourage civic participation, the scope of such inquiries threatens to compromise the very charitable activities that are the impetus for affording 501(c)(3)'s their tax-exempt status. The Coalition suggests that the stringent reporting requirements of the Internal Revenue Code for maintaining 501(c)(3) status are sufficient to discourage those activities that the Commission might properly regulate. If Congress wishes to expand the FEC's regulating authority and pass responsibility for monitoring the non-profit community it may do so, but the Commission should not delegate itself such a role by expanding the scope of its rules.

In addition to compromising the organizational capacity of nonprofits, the Coalition asserts that the proposed rule changes will have a chilling effect on issue-centered advocacy. The Commission itself seems to recognize that the contours of the “promote, support, attack or oppose” standard for expenditures are not apparent, and the Coalition believes that such a standard is consequently inherently subject to arbitrary and capricious enforcement. The identification of officials in a position to influence policy is a crucial element of effective issue advocacy, but such identification might be fairly understood under the proposed rules as activity supporting or opposing those officials. Indeed, in a two-party system, any statement on a politically controversial issue might be understood as promoting or attacking a particular candidate or political party. The Courts and Congress have certainly made it clear that all public expression on controversial topics is not subject to FEC regulation, but the Coalition feels that, as a practical matter, the proposed rule changes improperly give the Commission discretion to treat it as such.

Finally, the Coalition is particularly concerned about the proposed rule changes regarding voter registration and “get out the vote” activities. Specifically, the proposed changes offer too little guidance in determining whether such activities are partisan in nature and therefore subject to regulation. Mobilizing voters around a particular issue is inherently partisan when candidates in a two-party system have adopted opposing positions on that issue. In states like Mississippi, the demographics of party affiliation by race indicate that encouraging the registration of historically disenfranchised groups is likewise arguably partisan even when divorced from any political issue. Indeed, data on voter interest and election-day turnout can plausibly be understood to indicate that encouraging registration and voting in any manner is on some level a partisan activity. The Coalition finds it tragically ironic that the same federal government which belatedly enforced hard-won rights gains in Mississippi now proposes to treat efforts to encourage its exercise as activity to be discouraged by regulation.

For foregoing reasons, the Coalition respectfully encourages the Commission to withdraw the NPRM and to leave the sweeping changes in the FEC’s powers and responsibilities envisioned thereby to Congress.

Sincerely,

The Mississippi Access to Democracy Coalition

Ms. Leslie M. Gross
Advocacy Director
The Mississippi Center for Justice

Mr. Derrick Johnson
State President
MS State Conference of Branches of the NAACP

Ms. Nsombi Lambright
Executive Director
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